vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6159 OF 1997

Shri Haribhau N. Nikam ... Petitioner

V/s.

The Chairman,
Padmn. Vasantdada Patil High School
and Junior College, & Ors. ... Respondents

Mr.Vishwanath Talkute for Petitioner
Mr.S.P. Thorat for Respondent No.1
Mr.S.K. Chinchalikar, AGP, for Respondnet Nos.3 and 5
Mr.Rajesh Ketkar for Respondent No.7

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 13, 2007**

ORAL JUDGMENT:

. The petitioner challenges the order of the School Tribunal which has dismissed his appeal on 14.10.1997.

2. The petitioner was issued an appointment letter by Respondent No.1 on 30.5.1994. This appointment was pursuant to an application submitted by the petitioner on 20.5.1994. The appointment letter stated that the petitioner was being appointed w.e.f. 13.6.1994 on probation. The words " temporary" and "permanent" have been cancelled in the appointment letter. Clause 5 is handwritten to the effect "your appointment is not in reservation (open) post". Admittedly, the petitioner worked with the College for two years upto 18.6.1996.

The petitioner thereafter was prevented from attending work by Respondent No.1. The petitioner, therefore, filed an appeal on 16.7.1996 being Appeal NO.58 of 1996. The School Tribunal by its order dated 14.10.1997 dismissed the appeal by concluding that the appointment of the petitioner was against a reserved category post as there was a backlog of appointments of the backward classes. The Tribunal concluded that in the year 1993-94, there was a backlog of six seats for Scheduled Castes and five seats for Scheduled Tribes while one seat for the Other Backward Class category was filled in the year 1993-94. The Tribunal also noted the fact that the appointment was made pursuant to the post being advertised in the daily newspaper 'Aikya'. That advertisement stipulated that lecturers for the subject of economics and commerce were to be selected as also for other subjects and that only the backward class candidates would be selected. This advertisement was issued on 29.5.1994 immediately on 30.5.1994, the petitioner was appointed. Apparently, this appointment of the petitioner was not pursuant to the advertisement but on the basis of the application made on 20.5.1994. Thus, the entry of the petitioner into the college was itself in violation and in breach of the MEPS Act and the Rules framed thereunder.

3. The School Tribunal has also considered the fact

that the Education Officer had not approved of the appointment of the petitioner when sought by the College right from 1994. The Tribunal has also considered the fact that the petitioner was appointed against a roster point which was for a backward class candidate and therefore, he could not have ever been appointed in that post for a probationary period of two years. It was not a clear permanent vacancy which permitted the management of the college to appoint him on a clear permanent vacancy.

4. The learned Advocate for the Petitioner submits that the Tribunal has not bothered to consider the appointment order issued to him and whether that would have any bearing on the facts and circumstances in the present case. It is apparent from the order of the Tribunal that it has not considered the order which was issued to the petitioner. However, it has observed that all appointments which were made pursuant to the advertisement in the daily newspaper "Aikya" could have been made on a temporary basis only for the year 1994-95 if there was no candidate from the reserved category. The initial appointment itself of the petitioner, who admittedly does not belong to the backward classes, was not in accordance with law and, therefore, the Tribunal has rightly dismissed the appeal.

5. However, it appears that the petitioner has in fact worked pursuant to the appointment letter issued to him and has not been paid his salary. It is expected that the College will pay him the salary for the days he has worked. The petitioner may avail of the remedies open to him in law to recover this amount.

6. Petition dismissed. Rule discharged. No costs.